IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

WP(C).No. 21937 of 2007(J)

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OS.62/2006 of MUNI-MAGI.COURT,PATTAMBI

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PETITIONER:

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GOPALAKRISHNAN,
AGED 52, S/O.CHOLAKKAPARAMBIL MAKKUNNI,
PERUMUDIYOOR POST, PATTAMBI.

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENTS:

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1. JAYADEVAN,
S/O.GOVINDAN MASTER,
PUTHANAYIL HOUSE, PERUMUDIYOOR POST,
PATTAMBI.

2. THARA JAYADEVAN,
W/O.JAYADEVAN,
PUTHANAYIL HOUSE, PERUMUDIYOOR POST,
PATTAMBI.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**M.N.KRISHNAN, J.**

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**WP(C)No. 21937 OF 2007 J**

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**Dated this the 17th July, 2007.**

**JUDGMENT**

This writ petition is filed seeking to set aside the order of the learned Munsiff, Pattambi on the question of burden of proof. The plaintiff instituted a suit for an injunction and the defendant filed a counter claim and the dispute is with respect to the boundary wall and its entitlement and for a mandatory injunction. It is a settled principle of law that the counter claim is only another plaint and it has to be decided as a suit. Just because the defendant chooses to file a counter claim the burden of the plaintiff to prove his case will never shift. If circumstances exist and further evidence becomes necessary at a stage which was not put to the plaintiff while taking in evidence that can always be considered by the Court and permitted to be adduced. But the question of burden of proof of the plaintiff will never change and therefore the finding of the court below is confirmed and writ petition is disposed of with the above directions.

**M.N.KRISHNAN**
**Judge**

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